

The Power of the Police and Human Rights Situation under Section 54 and 167 of the CrPC: A Critical Evaluation

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Abstract

In the recent years, there has been a considerable growth in the name of arrest without warrant and the inhuman torture of the person arrested in the name of interrogation while under the police custody. This paper has examined the impact of making arrest without warrant and the sufferings of the arrested person without trial which give rise to the question of violation of human rights. The central focus of this research is to explore the role of the police to protect the human rights in Bangladesh and to find out the problems faced by the police while performing their duties. It also aims to go through the existing human rights situation in Bangladesh as well as to find out the ways by making effective recommendations to improve the situation through positive role played by the police in this regard.

Keywords: Power of the Police, Human Rights, Arrest, Remand.

1. Introduction

Police is the main law enforcing agency in our country and it is entrusted with the duty to secure public life by maintaining law and order situation of the territory. To ensure the law and order of the country, its first task is to prevent and detect crimes and criminal and apply the legal actions complying with the situation. There are lots of other duties besides the main task and the protection of human rights has ultimately been entrusted to the police. But unfortunately the police as well as its associated branches have been accused of violating human rights in several times under section 54 of CrPC which has become a great disquiet among the people of our country.

Human Rights are the most important issues in the present context of the world. In every step of social and national life people must have the opportunity to embrace their fundamental rights which in greater interest culminate in human rights. Preserving the human rights absolutely for the people, a state becomes trustworthy to its inhabitants. Without ensuring human rights in efficacious manner, no state can establish its existences and internal disciplinary action. If the state becomes failure to ensure the best protection of human rights, then it lost its acceptance from its citizens. The Government is the savior and knight in shining armor of fundamental rights of its citizen. So, the Government should be responsible for the human rights of the citizens and should also ensure the protection of the rights of its people, so that question may not arise as to the violation of human rights by the police for various reasons while performing their duties.

There always remains a need to have a balance in the social and national life between the liberty of the individuals and safeguards provided as to secure the rights of the same. How to ensure this balance is the basic dilemma that is faced while there is implementation of the criminal Law as well as the constitutional Law. This is required to be followed at every stage of the implementation of the process in any of its forms and manners. One of the processes that impose a major threat to the liberty of the individual is that of arrest. There are many grounds of arrest under a warrant issued by the court and the procedure has been set out in the statute. But, section 54 of the CrPC deals with the power of police to arrest without warrant which culminate in the misuse of power, torture and inhuman behavior of the police to the ordinary people. The statutory law permits remand of arrestee in police custody for certain period. Particularly when investigation cannot be completed within the prescribed period of time, in most of the cases police tend to resort to physical torture and cruelty ostensibly for the purpose of eliciting information

or extracting confession from the arrestee in violation of article 35 of the Constitution of the People's Republic of Bangladesh.

1.1 Statement of the Problem

In the constitution of the People's Republic of Bangladesh, the provisions relating to human rights are incorporated in two separate parts namely part II- Fundamental Principles of State policy and part III- Fundamental rights and it is notable here that the Supreme Court itself is responsible to protect the fundamental rights. As ensuring the safety of the life and property of its citizens is one of the basic responsibilities of the government in all societies and the government provides a feeling of security to its citizens by establishing and maintaining an efficient and an effective police force that is to maintain the law and order in the country. But the collective security enjoyed by the citizens is not enough in a democratic society they also want to enjoy their individual freedom and rights without unwarranted and illegitimate interference by a coercive and an insensitive police force. In exercising proper control and superintendence over their activities, the police need to be accountable for the various acts of commission and omission and keep a close relationship with the community.

Police function includes both preventive and protective roles in the course of maintaining law and order and these roles involve initiating programs to reduce caste and communal segregation and tensions, reduce opportunity for criminal victimization and educate the citizens to the crime prevention measures. Also as a formal force, the Police are thought as the best medium of protecting public peace and tranquility including human rights. But at present human rights are becoming vulnerable and facing threat in many ways including wanton arrest, extra judicial killings, torture in the name of police remand, custodial death, discrimination in getting justice and even in filing cases etc. which are closely related with the acts of that very protecting force Police. Moreover, sometimes human rights are violated by the malpractices of police under sections 54 and 167 of Code of Criminal procedure, 1898. Women, children, workers, members of minority groups, persons with disabilities, even prisoners without trial often face social discrimination, economic disadvantages as well as become deprive of the right to fair trial and personal liberty and thus are becoming the victims of human rights violation. So, this dependable means of human rights protection often come under severe criticism by public and media and the strict scrutiny of the Courts, National Human Rights Commission and others Human rights organization for the allegation of the human rights violation by them.

1.2 Research Questions

The police as the prime functionaries of the law enforcing agencies are mainly responsible to protect and secure public life and security by ensuring law and order situation. But in performing their functions under different circumstances this force is to endure and comply with various legal and professional complications. For this reason, various questions arise as to the improper and unethical exercise of power, lack of accountability, unlimited power of the police and its misuse etc. My research paper highlights on some questions as stated following:

- How much the legal procedure of making an arrest is followed by police before arresting a person?
- How much do the police apply power under section 54 of CrPC on just and equitable grounds?
- Who are mainly held liable for violation of Human rights among the ranks of police force?
- How much the directions pronounced by the Supreme Court are followed on the ground of making an arrest and remand under sections 54 and 167 of the CrPC?

2. Literature Review

Human Rights are moral norms or principles which describe certain standards of human behavior and are regularly protected as legal rights in international and municipal Law. They are commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because he/she is human being and which are inherent in all human being regardless of their nation, location, language, ethnic origin or any other status. These rights should not be taken away except as a result of due process that is based on specific circumstances; for example human rights may include freedom from unlawful imprisonment, torture and execution (Wikipedia).

Akkas, Dr Sarkar Ali (2009) in the book entitled "Law of Criminal Procedure" highlights that section 54 of CrPC gives wide power to the police to make an arrest without warrant in certain circumstances. The philosophy behind

this power is that prevention is the most effective approach to control crime. The object is to give widest powers to the police in cognizable cases subject to the limitation that the powers to be used cautiously and reasonably.

Halim, Md Abdul (2011) in his book named “Text Book on Criminal Procedure” points out that section 54 deals with general power of arrest and section 55, 56, 64 and 65 deal with special powers of arrest. The special power under these sections cannot override the general powers of arrest in cases provided for in section 54. Thus a police officer while under a special power of arrest may use his general power of arrest under section 54 and this is not affected by the empowerment of his special power of arrest.

According to FIDH (International Federation of Human Rights), (2011) Bangladesh has failed to keep promises in key issues of human right before the international human rights council as human rights violation continues unabated here including extra judicial death, torture and cruel in law enforcement custody, act of violence perpetrated on women and children.

Islam, Md. Saiful (2011) focuses on the human rights violation in Bangladesh through the preventive detention and also put some recommendations in this regard.

Mahmud, Taucif (2011) studies the role of police to prevent crime in Bangladesh and he finds out various forms of crimes including gross violation of human rights in the name of police remand, filing false cases etc.

3. Objectives of the Research

The main objective of this research is to explain the real human rights situations in Bangladesh and to understand the problems relating to the role of police in this field under section 54 and 167 of the CrPC. Besides this, the following objectives are noteworthy:

- To identify the major problems and issues caused by the police under section 54 and 167 of CrPC and human rights situation
- To determine the role of the Govt. in Dissemination of Human rights and its practice by the Law enforcing Agencies
- To forward some recommendations for the better protection of human rights by the police organization of the country.

4. Methodology of the Research

To conduct this research in the light of the objectives, I have used the information from various sources relating to section 54 and 167 of CrPC. This research paper is mainly based on secondary sources and data have been collected from relevant books, reports, articles, newspapers, journals, internet, statutes and case studies etc. Personal observation has been a key source for data collection and analysis. Moreover, the opinions of experts in this field have greatly facilitated this research.

5. Data Analysis and Findings

5.1. Use of force as a means to collect information

The view expressed in favor of police remand is that it is a civil necessity that if some force is not used, no clue can be found out from the hard nut criminals. On the other hand there, is a widely view that to send the arrested person to the police remand prima facie upholds the idea that the accused person did not gives the confessional statement voluntarily.

5.2. Violation of the Police Act, 1861 punishable but not in ordinary course of action

If any police officer cause unwarrantable personal violence to any person then he is liable to punishment under section 29 of the Police Act of 1861, but when an accused has been tortured in police custody then most of the time the police are seen not to acknowledge the truth of the fact. Moreover, they try to explain the fact in such a way that they are not responsible for the situation complained of.

5.3. Negligence to follow the provisions contained in the ICCPR, 1966

Article 9(1) of the International Covenant on Civil and Political Rights, 1966 enumerates that “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”. Some others important procedure have also been embodied in this article for the arrested person relating to inform the person arrested the reason of his so being arrested or charge against him, he should be produced before the court or Judge within a reasonable time, he has an enforceable right to compensation for such unlawful arrest or detention. But, the police for maintaining the command of his superior officer, personal grievance, political intimidation and lust most of the times forget to function as the proper Law enforcing agency.

5.4. Misuse of remand for legal lacuna

There is no proper guideline as to when such prayer of remand should be accepted and when rejected by the Magistrate and this legal lacuna gives the police officer and Magistrates to abuse the same. Though, judicial precedent has been established under different cases but, its practice not in optimal level.

5.5. Violation of equality and equal protection of Law

Article 27 of the Constitution of People’s Republic of Bangladesh provides equality before law and equal protection of Law, but an accused is tortured even they die through remand in police custody.

5.6. Malpractice of safeguards as to arrest and detention

According to Article 33 of the Constitution of People’s Republic of Bangladesh, no person who arrested shall be detained in custody more than twenty four hours without being informed as soon as possible of the grounds of such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice. But there is no provision regarding to it in section 54 and 167 of the CrPC that is why an accused is faced in torture.

5.7. Breach of protection in respect of trial and punishment

Remand totally violates Article 35(4) of the Constitution of Peoples’ Republic of Bangladesh because at most of the times in remand, an accused gives confessional statement against him under the undesirable pressure imposed on him by the police.

5.8 Case Study

The following case studies are sufficient to show the real human rights situation and the afflictions caused to the people at different times.

5.8.1 Case Study-1: BLAST and others vs. Bangladesh, 55 DLR 363

On July 23, 1998 a 21 year old University student, Shamim Reza Rubel died in the office of Detective Branch under police custody. He was arrested under section 54 of the Criminal Procedure and later reportedly tortured to death. It led to serious public outcry that instigated the Government to address the issue of custodial violence. The Government forms a judicial inquiry commission headed by Justice Habibur Rahman Khan to investigate the matter. The commission suggested some amendments to section 54 of Criminal Procedure. However, this failed to change the situation. Within a few months more people were reported to have been tortured, raped and

killed in police custody.

Following this, BLAST along with other concerned persons and organizations filed a Writ Petition in the High Court Division of the Supreme Court Challenging the arbitrary as also the section 54 and respectively remand and torture under section 167 of the Criminal Procedure Code. The high Court bench comprising Justice Md.Hamidul Haque and Ms. Justice Salma Masud Choudhury issued 15 point directives on 7th April 2003 regarding the arrest, detention, remand and treatment of suspects to be followed by law enforcement agencies. The court also suggested that some changes be made in the procedural law relating to section 54 and 167 with a view to preventing arbitrary arrests and custodial deaths and asked to the Government to comply with the order immediate.

5.8.2 Case Study -2: In Saifuzzaman vs. State 56 (2003) DLR 324

The Supreme Court held that what is a “reasonable suspicion” must depend upon the circumstances in each particular case, but it should be at least founded on some definite facts tending to throw suspicion on the person arrested and not on a mere vague surmise.

5.8.3 Case Study -3: Alhaj Md Yusuf Ali vs. the State 22 BLD (2002), 231

The High Court Division interpreted “reasonable suspicion” in exercising power under section 54, as a bona fide belief on the part of the police officer that an offence has already committed or is about to be committed. The court further held that a police officer arresting a person unjustifiably or otherwise than on reasonable grounds and bona fide belief renders himself liable for prosecution under section 220 of the Penal Code, 1860.

5.9 *Expression of the writer*

It is well known that every individual is entitled to some basic rights in all circumstances and it is the duty of the government to ensure those rights of the individuals. But after reviewing the relevant literature and examining the situation in different times I think that in lieu of protecting the rights of the individuals the police in different times has been misguided by the political party leading the govt., personal usury, maintaining liaison with the high officials, and sudden provocation. Now a day, it has become familiar among the people that the political parties forming the government misuse the police force in controlling the opposition party. It is evident to all that when the opposition party calls any political program namely party meeting, human chain, hartal, different demonstrative assembly etc. then the police eliminate such activities complained of unlawful or unethical, even if it is called on proper grounds corroborated by public demands. The Law enforcing agency at that time forget the question of human rights and follow the command of their superior officer and propagate their own political ideology. The lowest rank of the police force named constable are mainly employed in the field of maintaining different circumstances though in a state of emergency the high officials of the force carry out the situation. It is a matter of great regret that, the lowest rank of police are not highly educated and lacking in accurate knowledge of human rights, professional training, execution of duties as to the code of conduct etc. At the time of investigation of a case except judicial Inquiry, the police officers inquire into the matter but due to different unmethodical processes question arise as to the charge sheet and final report. Filing of naraji petition against charge sheet and final report has become a common issue in the criminal justice system. Moreover, at the time of remand the officer attempts to collect information as per their own satisfaction and if the situation does not favour to them then physical torture and other forms of punishment is inflicted to the person under their custody. In this respect, The Appellate Division of the Supreme Court of Bangladesh on May 23, 2016 has delivered the

verdict in an appeal of BLAST and others vs. Bangladesh case, in which the appellate division granted leave to appeal of the state in 2004 against the verdict of the High Court Division.

The appellate Division referred the verdict of the High Court Division and also ruled parts of sections 54 and 167 as being contradictory to the constitution. The instructions include:

- Law enforcing agency must not arrest anyone under section 54 to put him/her into detention.
- They shall show their identity cards while arresting the person.
- They shall inform the arrested person the reason of his/her so arrest within three hours.
- They must inform the relatives of the person arrested from anywhere outside of his/her workplace or house within an hour of such arrest through telephone or messenger.
- The detainee shall have the right to consult with his/her lawyer and relatives
- If the law enforcing agency want to quiz the person in custody, they must seek permission from the magistrate and the interrogation must held in a room with glass walls inside the prison where the relatives and lawyers of the detainee can be present.
- If the detainee alleges that physical torture was caused to him at the time of interrogation, then the magistrate shall form a medical board to check up his/her health condition. If the allegation is true, the magistrate shall take action against the responsible person under section 330 of the CrPC.
- If the instructions are followed properly, the sufferings and agony of the victim of suspicious arrest would be lessened at a great extend. But, due to different procedural and legal complications the victims of suspicious arrest are still to suffer a lot. The court also ordered not to arrest anyone without having uniform of the law enforcing agency at the time of making arrest. But, arrest without having proper uniform at present has added a great concern for the victim's family and most of such arrest is being made by the police on the ground of political motivation. So, human rights violation and the liability of the police have reached in a stage where the ordinary people believe the police as a name of terror forgetting its benevolent character.

6. Recommendations

- The legislative authority should up to date the existing criminal and penal laws in order to control crimes and for the ends of justice.
- Dissemination of Supreme Court directions and guidelines as directed by the Court in making arrest and detention of the person.
- Amendment of the existing laws as directed by the Supreme Court.
- Separation of the law enforcement activities from investigation by forming an independent investigation cell.
- Proper human rights training should be provided to the police for creating awareness.
- Restoration of the people's trust in police by initiating various benevolent functions
- The government, media and NGOs should play the positive role in dissemination of human rights.
- Police ombudsmen should be established to overview and evaluate the activities of the police administration.
- The principle of equity and fairness should be followed at the time of appointment and promotion of the police personnel.

- Police should be kept free in execution of duties from political interference.

7. Conclusion

Human rights are attached to a person from the time of its birth as human beings are born free and equal in the estimation of rights and dignity. The duty to uphold this right initially lies on the police force and other law enforcing agencies on behalf of the government or state. But sometimes, this force (police) fails to protect the person, property of the person and even in many cases violation of rights of the person is occurred by this force. Because, in our country most of the times, Rule of the govt. is followed not the proper sense of Rule of Law. The police force and other Law enforcing agency are used as a means to substantiate and perpetuate the Rule of the govt. There are many statutory Laws relating to the rights of the people dealing with proper protection and punishment for its violation. But, the implementation and necessary amendment of these statutory Laws are not in satisfied level as the governing wheel of the state is busy to establish Rule of the govt.

So, only law itself is not able to overcome all of the shortcomings rather its proper implementation is must to get positive result. Like other fields, although the human rights Law has been promulgated by the universal declaration nonetheless, it relates to other international covenants and also the constitutional Law of an indigenous country which are not exhaustive in concrete sense to protect victims from frequent violations and police as an organized law enforcing agency should play a crucial role in this regard to upgrade the human rights conditions in Bangladesh. It is a matter of great regret that, though for professional complications, public perception on different sensitive issues, political anxiety and situational pressure it may sometimes be difficult to ensure proper protection of rights of the people but as a law enforcing agency, the role of police is laudatory and skilled professional training is must for their sound implementation of identity.

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